

OPINION

The defendant entered a plea of guilty to possession of marijuana in a state penal institution and was sentenced to serve three years. The defendant properly reserved questions of law, and these questions were certified to this Court. They are:

I. The “punitive segregation” and other sanctions applied to the appellant for possessing contraband narcotics within a penal institution, and which are described as “punishments” by the Tennessee Department of Corrections, preclude subsequent indictment and trial for the same offense on grounds of double jeopardy.

II. The process by which prisoners who violate prison rules against possession of illegal contraband are selected for prosecution in state court is a selective enforcement that is devoid of any rational basis, and therefore a violation of the equal protection and due process rights of the appellant.

We affirm the judgment of the trial court.

The defendant was an inmate at the Northeast Correctional Facility in Johnson County. On February 12, 1995 prison officials found him in possession of 4-6 grams of marijuana.

A disciplinary hearing at the prison found the defendant to be in violation of prison policy. He was placed in punitive segregation for five days.

The matter was referred to the district attorney general for prosecution.

The defendant may not prevail on the double jeopardy claim. In *Ray v. State*, 577 S.W.2d 681 (Tenn. Crim. App. 1978), the Court held that the imposition of prison discipline for the purposes of institutional control does not bar prosecution for the criminal offense which gave rise to the prison discipline. We find no relevant cases holding otherwise.

The defendant claims the practice of the prison officials in referring some, but not all, prisoners who commit crimes while incarcerated, denies him equal protection of the law and violates his due process rights.

State officials may selectively prosecute some who commit crime and not prosecute others who commit crime without violating equal protection or due process rights of an accused. *Yearwood v. State*, 455 S.W.2d 612 (Tenn. Crim. App. 1970); *United States v. Allen*, 954 F.2d 1160 (6th Cir. 1992).

Selective enforcement is unconstitutional when the selection process is based upon arbitrary classification of those to be prosecuted. *Oyler v. Boles*, 368 U.S. 448, 82 S. Ct. 501 (1962).

The defendant does not show that there is an arbitrary classification of the state for which prosecution is reserved or that he is the member of any class arbitrarily selected for prosecution. He, therefore, has failed to show any basis for the dismissal of the indictment in this case.

The judgment of the trial court is affirmed.

John K. Byers, Senior Judge

CONCUR:

David H. Welles, Judge

Thomas T. Woodall, Judge